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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STEVEN V. LARSON

Appeal 2007-3878
Application 09/517,974
Technology Center 3600

Decided: April 21, 2008

Before CHUNG K. PAK, PETER F. KRATZ, and JEFFREY T. SMITH,
Administrative Patent Judges.

KRATZ, *Administrative Patent Judge.*

DECISION ON APPEAL

1 This is a decision on an appeal from the Examiner's final rejection of claims 1-17 and 19-21 and the Examiner's continued refusal to allow the same after entry of an amendment filed after the final rejection. We have jurisdiction pursuant to 35 U.S.C. § 6.

Appellant's invention is directed to a door and frame in combination with an air handling unit, which combination is configured to be mountable or adapted to be mounted on a building roof. Also, Appellant claims a door and frame in combination with an air handling unit, which combination is fixedly secured to a fixed structure or mounted on a non-moveable edifice. Claims 1, 16 and 21 are illustrative and reproduced below:

1. A door and frame in combination with an air handling unit mountable on the roof of building, the combination comprising:

- (a) a frame;
- (b) a hinged door engageable with the frame, the door comprising a front wall, rear wall, and side walls enclosing a hollow core and insulating material filling the hollow core; and
- (c) a gasket between the door and the frame, the gasket further comprising a flexible gasket wall with anti-roll extensions;

wherein the door and frame can withstand a pressure differential of greater than six and one-half inches of air pressure.

16. A door and frame combination with an air handling unit fixedly mounted on a fixed structure, the combination comprising:

- (a) a frame;
- (b) a hinged door engageable with the frame, the door further comprising a front wall, rear wall, and side walls enclosing a hollow core and insulating material filling the hollow core; wherein the insulating material is expanding polyurethane foam; and

(c) a gasket between the door and the frame, the gasket further comprising a flexible gasket wall with anti-roll extensions, and further comprising a friction reducing material on the gasket wall; and

(d) opposed thermal pockets in the door and in the frame, the thermal pockets being filled with high-density polyurethane.

wherein the door and frame can withstand a pressure differential of greater than eleven inches of air pressure.

21. A door and frame in combination with an air handling unit for a building having a roof, wherein the door and frame can withstand a pressure differential of greater than six inches of air pressure, the air handling unit being adapted for mounting on the roof of the building.

In addition to admitted prior art, the Examiner relies on the following prior art references as evidence in rejecting the appealed claims:

Jansen	3,684,342	Aug. 15, 1972
Colliander	4,538,380	Sep. 3, 1985
Gamow	5,467,764	Nov. 21, 1995
Ryan	5,581,591	Dec. 10, 1996
McDonald	5,921,043	Jul. 13, 1999

Claim 21 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Gamow. Claims 1-4 and 8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over admitted prior art in Appellant's drawing Figure 1 in view of McDonald, Ryan, and Gamow. Claims 9-11 and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over admitted prior art in Appellant's drawing Figure 1 in view of McDonald, Ryan, and Gamow. Claims 16, 17, 19 and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over admitted prior art in Appellant's drawing Figure

1 in view of McDonald, Ryan, Gamow, Colliander and Jansen. Claim 5 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over admitted prior art in Appellant's drawing Figure 1 in view of McDonald, Ryan, Gamow, and Colliander. Claims 6 and 7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over admitted prior art in Appellant's drawing Figure 1 in view of McDonald, Ryan, Gamow, Colliander and Jansen. Claim 12 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over admitted prior art in Appellant's drawing Figure 1 in view of McDonald, Ryan, Gamow, and Colliander. Claims 13 and 14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over admitted prior art in Appellant's drawing Figure 1 in view of McDonald, Ryan, Gamow, Colliander and Jansen.

Upon consideration of the arguments made in Appellant's Brief and the Reply Brief, we determine that Appellant has not identified any reversible error in the Examiner's maintained rejections, with the exception of the separate rejection of claims 16, 17, 19, and 20.¹ As such, we affirm the Examiner's rejections for reasons set forth in the Answer and below with the exception of the aforementioned rejection of claims 16, 17, 19, and 20.²

Anticipation Rejection over Gamow

"To anticipate a claim, a prior art reference must disclose every limitation of the claimed invention, either explicitly or inherently." *In re*

¹ Our references to the Brief are to Appellant's Brief filed May 30, 2006. Our references to the Reply Brief are to Appellant's Reply Brief filed May 04, 2007.

² Our references to the Answer are to the Examiner's Answer mail dated April 20, 2007.

Schreiber, 128 F.3d 1473, 1477 (Fed. Cir. 1997); *accord Glaxo, Inc. v. Novopharm, Ltd.*, 52 F.3d 1043, 1047 (Fed. Cir. 1995). However, anticipation by a prior art reference does not require that the reference recognize either the inventive concept of the claimed subject matter or the inherent properties that may be possessed by the prior art reference. *See Verdegaaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 633 (Fed. Cir.), *cert. denied*, 484 U.S. 827 (1987).

Anticipation under this section is a factual determination. *See In re Baxter Travenol Labs.*, 952 F.2d 388, 390 (Fed. Cir. 1991) (citing *In re Bond*, 910 F.2d 831, 833 (Fed. Cir. 1990)).

The Examiner has determined that “Gamow discloses a door 170 and frame 180 in combination with an air handling unit 110 and 120 for a building having a roof, wherein the door and frame can withstand a pressure differential greater than six inches of air pressure, the air handling unit being capable of being mounted on the roof of a building” (Ans. 3). The Examiner further maintains that Gamow’s device constitutes an air handling unit in that Gamow provides for the flow of air to pressurize and depressurize the chamber (Ans. 11). Also, the Examiner has determined that rejected claim 21 does not require the claimed air handling unit to be fixedly or permanently mounted on a building roof; but, only that the unit is structurally capable of being mounted on a building roof. *Id.*

Appellant contends that Gamow does not disclose that the hypobaric sleeping chamber (air handling unit) disclosed therein is an air handling unit adapted for mounting on a building roof top (App. Br. 5). In this regard, in the Brief and the Reply Brief, Appellant spars with the Examiner over the recited “adapted for mounting” claim language as presenting a patentable

distinction over the applied Gamow. In essence, Appellant asserts that “[t]he language “adapted for” limits the claim scope to the device of Gamow being mounted on the roof of the building, according to MPEP 2111.04” (Reply Br. 2).

Appellant does not specifically contest the Examiner’s findings with respect to the elements 110 and 120 of Gamow’s device as describing a door and frame in combination with an air handling unit as corresponding to the air handling unit combination broadly called for in claim 21.³ Rather, Appellant maintains the recited “adapted for mounting” limitation of the rejected claim requires a roof top mounting as a patentable distinction in arguing that the Examiner’s anticipation rejection is in error.

Hence, the issue before us on this appeal with respect to the Examiner’s anticipation rejection is: Has Appellant identified reversible error in the Examiner’s anticipation rejection by the assertion that the claim recitation with regard to “adapted for mounting on” a building roof is a claim requirement for a structural feature not found in Gamow?

We answer this question in the negative and we affirm the Examiner’s anticipation rejection of claim 21, based on this record. Appellant has not persuasively identified reversible error in the Examiner’s anticipation holding based on the assertion that the required “adapted for mounting...” feature is missing from the device of Gamow. In this regard, Gamow discloses that the disclosed device includes a variety of structural

³ Arguments not made in the Briefs are considered to be waived. *See* 37 C.F.R. § 41.37(c)(vii) (2006).

elements, such as legs (160) or frame (20), that are capable of serving as attachment features for securing the device to another structure, such as the roof of a building. All that the argued “adapted...” language of claim 29 requires is the capability for such mounting, not that the recited unit is in a mounted combination with a building roof.

After all, it is axiomatic that, in proceedings before the PTO, claims in an application are to be given their broadest reasonable interpretation consistent with the specification, and that claim language, such as the contested claim language at issue here, should be read in light of the specification as it would be interpreted by one of ordinary skill in the art. *See In re Sneed*, 710 F.2d 1544, 1548. Moreover, limitations are not to be read into the claims from the specification. *In re Van Geuns*, 988 F.2d 1181, 1184 citing *In re Zletz*, 893 F.2d 319, 321. Also, *see In re Ashley*, 315 F.2d 945, 948 (CCPA 1963) (“adapted to be connected...” claim language does not require the claimed air conditioner to be incorporated in or connected to a system involving other elements). Hence, Appellant has not established reversible error in the Examiner’s rejection based on the assertions based on the recited “adapted for” claim language.

On this record, we affirm the Examiner’s anticipation rejection of claim 21.

Concerning the Examiner’s obviousness rejection of claims 1-4 and 8, we note that Appellant argues the rejected claims together as a group. Thus, we select claim 1 as the representative claim on which we decide this appeal as to this commonly rejected group of claims.

Appellant does not dispute the Examiner’s determination that the admitted prior art shown in drawing figure 1 of this Application, as further

described in the Specification, discloses or suggests an air handling unit mounted on a building roof, which air handling unit includes a hinged door (D) comprising front, rear, and side walls; and wherein an associated air handling unit door frame at least inferentially includes an associated gasket located between the frame and door in a manner such that the air handling unit assembly can withstand a six inch air pressure differential. (Ans. 4; App. Br. 5-6; Reply Br. 3-4; Specification 2; Fig. 1). Nor does Appellant quibble with the Examiner's determination that the use of an insulation-filled hollow core door as the door for the admitted prior art structure would have been obvious to one of ordinary skill in the art given the combined teachings of the admitted prior art and McDonald (Ans. 4-5; App. Br. 5-6; Reply Br. 3-4). Rather, Appellant contends that Gamow, one of the applied references, represents non-analogous art.

We disagree. It is well settled that the prior art relevant to an obviousness determination encompasses not only the field of the inventor's endeavor but also any analogous arts. See *Heidelberger Druckmaschinen AG v. Hantscho Commercial Products Inc.*, 21 F.3d 1068 (Fed. Cir. 1994) and *In re Wood*, 599 F.2d 1032 (CCPA 1979). The test of whether a reference is from a nonanalogous art is first, whether it is within the field of the inventor's endeavor, and second, if it is not, whether it is reasonably pertinent to the particular problem with which the inventor was involved. See *Wood*, 599 F.2d at 1036. A reference is reasonably pertinent if, even though it may be in a different field of endeavor, it is one which because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his/her problem. *In re Clay*, 966 F.2d 656, 659 (Fed. Cir. 1992).

Here, the admitted prior art is concerned with an air handling unit structure that comprises a shed-type housing, as depicted in Appellant's drawing Figure 1. This acknowledged prior art includes door and sealing elements therefor, which structures are capable of sealing the interior of the air handling unit from pressure differentials caused by high winds (Specification 2). Appellant acknowledges that these acknowledged prior art air handling units can typically accommodate six inches of air pressure differential. *Id.* The Examiner further relies on Ryan for disclosing gaskets with anti-roll extensions for sealing a door and frame and the Examiner makes the undisputed obviousness determination that one of ordinary skill in the art would have been led to employ gaskets (seals) of the type disclosed by Ryan for sealing the door and frame structure of the air handling unit of the admitted prior art (Ans. 5; App. Br. 5-6; Reply Br. 3-4).

Given those teachings of the applied prior art and the above-noted determination of the Examiner, we agree with the Examiner that one of ordinary skill in the art would have looked to the sealing arts, in general, in solving the known problems associated with sealing air handling unit doors against pressure differentials and, in so doing, would have considered the teachings of Gamow with respect to sealing the chamber thereof so as to withstand a pressure differential in the range of 6.5 inches and greater to be within the ambit of relevant prior art that deals with pressure differential accommodation between an enclosed structure and the ambient.

Moreover, the soundness of the Examiner's obviousness determination is not defeated even if Gamow were considered to be unavailable as non-analogous prior art. This is so because the admitted prior art and other references of record aside from Gamow supply more than adequate evidence

that would have been suggestive of employing door gasket seals having the recited properties in the admitted prior art structure. Indeed, the called for six and one-half inches of air pressure differential handling capacity for the claimed gaskets and door and frame construction is considered to be fairly within the design ranges for pressure differential accommodation that one of ordinary skill in the art would have found obvious based on the combined applied reference teachings given that the admitted prior art acknowledges that accommodation of six inches of air pressure differential was typical in the prior art. After all, the question of obviousness cannot be approached on the basis than an artisan having ordinary skill would have known only what they read in the references, because such artisan is presumed to know something about the art apart from what the references disclose. *See In re Jacoby*, 309 F.2d 513, 516 (CCPA 1962). It is not necessary that suggestion or motivation be found within the four corners of the references themselves; a conclusion of obviousness may be made from common knowledge and common sense of the person of ordinary skill in the art without any specific hint or suggestion in a particular reference. *See In re Bozek*, 416 F.2d 1385, 1390 (CCPA 1969). Further, in an obviousness assessment, skill is presumed on the part of the artisan, rather than the lack thereof. *In re Sovish*, 769 F.2d 738, 743 (Fed. Cir. 1985). Thus, we are bound to consider the disclosure of each reference for what it fairly teaches one of ordinary skill in the art, including not only the specific teachings, but also the inferences which one of ordinary skill in the art would reasonably have been expected to draw therefrom. *See In re Boe*, 355 F.2d 961, 965 (CCPA 1966); and *In re Preda*, 401 F.2d 825, 826 (CCPA 1968).

Therefore, even if we could have agreed that Gamow represents non-analogous prior art, which we do not, such argument falls short of identifying reversible error in the Examiner's rejection of representative claim 1.

On this record, we are in complete agreement with the Examiner's obviousness determination as to representative claim 1. Accordingly, we affirm the Examiner's obviousness rejection of claims 1-4 and 8.

Concerning the Examiner's separate rejection of claims 9-11 and 15 over the admitted prior art taken with McDonald, Ryan, and Gamow, we note that Appellant makes basically the same argument against the Examiner's obviousness rejection of these claims as made against the Examiner's obviousness rejection of claim 1; that is, Garnow represents non-analogous art. We select claim 9 as the representative claim for this commonly rejected and argued together group of claims. Furthermore, we affirm the Examiner's rejection of representative claim 9 for substantially the reasons set forth in the Answer and above.

Concerning the Examiner's separate rejections of claims 5 and 12, the Examiner additionally relies on Colliander in each of these separate rejections of these dependent claims. Appellant argues for the patentability of each of these claims on the basis of the arguments (Gamow allegedly representing non-analogous art) presented for claims 1 and 16, respectively (App. Br. 8-10). Because we have found these arguments unpersuasive as indicated above, we shall also affirm the Examiner's separate rejections of these dependent claims, on this appeal record.

Concerning the Examiner's separate rejection of claims 16, 17, 19, and 20, the Examiner's separate rejection of claims 6 and 7, and the

Examiner's separate rejection of claims 13 and 14, we note that the Examiner additionally relies on the teachings of Jansen in each of these stated rejections. The claims are argued together in each separate rejection. Thus, we select claims 16, 6, and 13, as the representative claims on which we decide this appeal as to each of these rejections, respectively.

The Examiner notes that Jansen discloses a thermal insulating panel (12) that includes a thermal pocket (unlabelled but allegedly shown in drawing Fig. 2) filled with insulating material (50).

Based on this disclosure and that of the admitted prior art, the Examiner asserts that "[i]t would have been obvious to one of ordinary skill to provide the admitted prior art of figure 1, as modified above, with thermal pockets and attendant insulating material, as taught by Jansen, to provide an efficient means of manufacturing the door and frame combination" with respect to representative claim 16 (Ans. 8). The Examiner analogously applies Jansen in rejecting each of representative claims 6 and 13 in the separate rejections involving each of these dependent claims.

Appellant, on the other hand, argues that Jansen does not disclose thermal pockets in the door and in the frame, as called for in each of these separately rejected representative claims (App. Br. 8-10). In rebuttal, the Examiner correctly notes that the rejections involving Jansen are not over Jansen alone, but over Jensen in combination with the other applied references as employed in each of the stated rejections. In this regard, the Examiner asserts that an ordinarily skilled artisan at the time of the invention would have furnished thermal insulating pockets including foam in both the door and frame of the admitted prior art device to diminish heat loss (Ans. 12).

Appellant responds with the further contention that Jansen does not furnish a teaching of furnishing a thermal pocket in the door itself in addition to a frame thermal pocket, the pockets being filled with high density polyurethane foam (Reply Br.4-6).

We agree with the Examiner with respect to this matter in so far as representative claims 6 and 13 are concerned. In this regard, we note that the second insulation material called for in claims 6 and 13 for filling insulation pockets is not required to be formed of any particular material, much less a material that is different from the insulation material that is used in the core of the door. In our view, one of ordinary skill in the art would have been reasonably led to seal and insulate the air handling unit of the admitted prior art using known sealing/insulation materials to fill pockets in areas of the door frame and door where heat and/or air leakage would be expected and/or determined to occur in order to provide units capable of handling air pressure differentials (leakage conditions) expected under high wind conditions.

On this record, we shall affirm the Examiner's separate obviousness rejections of representative claims 6 and 13.

As for representative claim 16 and the separate obviousness rejection pertaining thereto, we note that the latter claim requires two different types of insulation material: (1) an expandable polyurethane in the hollow core of the door and a high density polyurethane being used in opposed thermal pockets formed in both the door and the frame. Here, the Examiner has not adequately detailed and explained how the applied teachings of the references would have led one of ordinary skill in the art to such a specific construction.

It follows that, on this record, we reverse the Examiner's rejection of claims 16, 17, 19, and 20.

CONCLUSION

The decision of the Examiner to reject claim 21 under 35 U.S.C. § 102(b) as being anticipated by Gamow to reject claims 1-4 and 8 under 35 U.S.C. § 103(a) as being unpatentable over admitted prior art in Appellant's drawing Figure 1 in view of McDonald, Ryan, and Gamow; to reject claims 9-11 and 15 under 35 U.S.C. § 103(a) as being unpatentable over admitted prior art in Appellant's drawing Figure 1 in view of McDonald, Ryan, and Gamow; to reject claim 5 under 35 U.S.C. § 103(a) as being unpatentable over admitted prior art in Appellant's drawing Figure 1 in view of McDonald, Ryan, Gamow, and Colliander; to reject claims 6 and 7 under 35 U.S.C. § 103(a) as being unpatentable over admitted prior art in Appellant's drawing Figure 1 in view of McDonald, Ryan, Gamow, Colliander and Jansen; to reject claim 12 under 35 U.S.C. § 103(a) as being unpatentable over admitted prior art in Appellant's drawing Figure 1 in view of McDonald, Ryan, Gamow, and Colliander; and to reject claims 13 and 14 under 35 U.S.C. § 103(a) as being unpatentable over admitted prior art in Appellant's drawing Figure 1 in view of McDonald, Ryan, Gamow, Colliander and Jansen is affirmed.

The Examiner's decision to reject claims 16, 17, 19 and 20 under 35 U.S.C. § 103(a) as being unpatentable over admitted prior art in Appellant's drawing Figure 1 in view of McDonald, Ryan, Gamow, Colliander and Jansen is reversed.

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Application 09/517,974

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv) (2006).

AFFIRMED-IN-PART

tc

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